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In re Application of	:
LOOSMORE, Sheena M. et al.	: DECISION ON
US Application No.: 09/806,709	:
PCT Application No.: PCT/CA99/00938	: PETITION UNDER
Int. Filing Date: 07 October 1999	:
Priority Date: 07 October 1998	: 37 CFR 1.181
Attorney's File Reference: 1038-1138 MIS:jb	:
For: PROTECTIVE RECOMBINANT	:
HAEMOPHILUS INFLUENZAE HIGH	
MOLECULAR WEIGHT PROTEINS	

This is a decision on applicants' "Petition To Withdraw Holding of Abandonment" filed on 16 July 2004. The submission has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 07 October 1999, applicants filed international application no. PCT/CA99/00938. The international application claims a priority date of 07 October 1998 and designates the United States. A demand for International Preliminary Examination was filed 05 March 2000. According, the deadline for entry into the United States National Stage was thirty months from the priority date, that is 07 April 2001.

On 04 April 2001, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an unexecuted declaration.

On 07 May 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating a declaration in compliance with 37 CFR 1.497(a) and (b) was required. A surcharge for providing the oath or declaration later than the appropriate 30 months from the priority date was also required.

On 27 July 2001, applicants filed a Response to the Missing Requirements, which was accompanied by, *inter alia*, Declaration and Power of Attorney and the surcharge for filing a late declaration.

On 03 September 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916), stating that the sequence disclosure contained in the application sequence listing was not in compliance with 37 CFR 1.821-1.825, and requiring an initial or substitute computer readable form (CRF) of the "Sequence Listing" and an initial or substitute paper copy or compact disc of the "Sequence Listing," as well as an amendment directing its entry into the specification.

On 24 October 2003, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Defective Response mailed 03 September 2002 within the time period set therein. The Notification indicated that a statement that the CRF is the same as the content of the sequence listing on paper or compact disc was not included.

On 16 July 2004, applicants filed the present petition urging that a proper response was filed 26 September 2002. The petition was accompanied by, *inter alia*, a copy of the voluntary amendment directing entry of the "Sequence Listing" into the specification and a copy of the stamped postcard receipt evidencing receipt by the United States Patent and Trademark Office on September 27, 2002, of the Response to the Notification of Defective Response, Sequence Listing and Diskette containing Sequence Listing.

### DISCUSSION

The above-identified application was held abandoned for failure to file a complete response to the Notification of Defective Response mailed 03 September 2002, in that, a statement that the CRF is the same as the content of the sequence listing on paper or compact disc was not included in the reply. Initially, it is noted that the Notification of Defective Response (Form PCT/DO/EO/916) mailed 03 September 2002 was improper because no defect was specified in the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905). In any event, applicants state in their present petition that "there was submitted to the Office a Sequence Listing in computer-readable and hard-copy forms and a Voluntary Amendment directing entry of the Sequence Listing into the specification." A review of the application file reveals that all of the papers filed 27 September 2002 are located in the file, including the statement that the CRF is the same as the content of the sequence listing on paper or compact disc. As a result, applicants' response, mailed 27 September 2002, satisfies the requirements of 37 CFR 1.821-1.825 and the Notification of Defective Response. It should be noted that while applicants state that a Petition to Withdraw Holding of Abandonment was filed on December 3, 2003, no evidence has been submitted of this filing (i.e. a copy of the stamped postcard receipt). Accordingly, by filing the instant petition and the response to the Notification of Defective Response, applicants completed all the requirements under 35 U.S.C. 371 for entry into the United States on 16 July 2004.

The holding of abandonment is hereby **WITHDRAWN** and the NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) mailed 03 September 2002, is hereby **VACATED**.

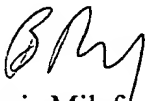
**DECISION**

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The application has an international filing date of 07 October 1999 under 35 U.S.C. 363 and a date of 16 July 2004 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing.

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